

**THE SITUATION IN BOSNIA AND HERZEGOVINA**

**STATEMENT**

**BY**

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Mr. President

There have been few occasions on which an open debate of the Security Council has been more needed than today. What is under discussion is not merely the future of the International Criminal Court – a landmark achievement in the history of international law – but also and what is even more, the role and the credibility of the Security Council.

Mr. President

The mandate of the Council under the UN charter does not lack clarity. A transgression of this mandate as a result of the ongoing debate would not only have disastrous consequences for the ICC, but maybe even more devastating ones for the Council itself: We do not want to see the Council put itself in a position where the UN membership at large is forced to question the legality of one of its decisions. Such a situation would have a devastating impact on the credibility of the Council and thus of the organization as a whole. I would like to comment in this regard on the following two approaches contemplated within the Council to solve the current impasse:

- The one under discussion last week invokes article 16 of the Rome Statute, while effectively amending it. As has been said by many over the past few days and most prominently by Secretary-General Kofi Annan, this would constitute an action outside the mandate of the Security Council and fundamentally affect the process of treaty-making as practiced in the United Nations.

- The other approach which has been explored is a “generic resolution” which would address the role of the ICC with regard to peacekeeping in general, rather than in conjunction with a specific peacekeeping operation. This could only be based on the untenable notion that the International Criminal Court constitutes a threat to international peace and security.

The conclusion must by necessity be that neither of the two approaches is viable, both politically and legally speaking.

Mr. President

The concerns expressed with regard to the International Criminal Court are well known. Indeed, they have been discussed at length at the Diplomatic Conference in Rome. While not everybody deemed that necessary during the course of those negotiations, the view prevailed in the end that it was advisable to make a massive effort to address these concerns. As a result, the Rome Statute provides for a number of painstakingly drafted safeguards to prevent frivolous and politically motivated investigations and prosecutions, the principle of complementarity being the most crucial one. This effort was carried out in good faith and with creative thinking from some of the best available expertise in the area of international law. We are disappointed that this genuine effort has not met with the appreciation we believe it deserves and we have serious difficulties to understand the substantive reasons for that.

Mr. President

Peacekeeping and international justice are, to our minds, complementary concepts. We find it therefore disturbing that some of the discussions under way treat them in effect as mutually exclusive. There can be no choice between one or the other, when the international community so obviously needs both. The progressive development of international law and the respect for the rule of law as well as the maintenance of international peace and security are core activities of the United Nations and they both must be treated as such. There is

no choice here that can be made, and the Council must therefore not impose such a choice on itself.

Mr. President

We are aware that many avenues have been explored to find a viable solution to the prevailing deadlock. A magic formula seems not to have been found yet, and we are increasingly convinced that this is not a matter of drafting, not a case of constructive ambiguity. Whatever options are considered, the question in the end always comes down to whether or not respect a treaty adopted by a Diplomatic Conference and ratified by 76 States. Both as a State Party to the Statute and as a Member State of the United Nations, we believe that the answer is obvious and that the preservation of the integrity of the statute is the only way for the Council to preserve its credibility and effectiveness.

Thank you.